

No. 15089

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**United States  
Court of Appeals  
For the Ninth Circuit**

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ALEJANDRO CARPENTERO, Also Known as  
Alejandro Llanos,

Appellant,

vs.

WILLIAM A. HOGAN, Officer in Charge, Immi-  
gration and Naturalization Service, Honolulu,  
Hawaii,

Appellee.

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**Transcript of Record**

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**Appeal from the United States District Court  
for the District of Hawaii**

**FILED**

**MAY 24 1956**



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**Court of Appeals**  
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**Appeal from the United States District Court  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court  
for the District of Hawaii

No. 1462

ALEJANDRO CARPENTERO, Also Known as  
ALEJANDRO LLANOS,

Plaintiff,

vs.

WILLIAM A. HOGAN, Officer in Charge, Immi-  
gration and Naturalization Service, Honolulu,  
Territory of Hawaii,

Defendant.

COMPLAINT FOR DECLARATORY  
JUDGMENT AND FOR OTHER RELIEF

Comes now plaintiff above named, by Hyman M. Greenstein his attorney, and complaining of defendant above named respectfully alleges and shows as follows:

1. That plaintiff was born in the Philippine Islands on May 3, 1913 and first came to the United States (port of Honolulu) on May 9, 1930, from which time he has continuously maintained his residence in Honolulu.

2. That plaintiff is married to a citizen of the United States, to wit: Salome V. Llanos, and that there are four children born of this marriage, all born within the Territory of Hawaii and citizens of the United States.

3. That defendant is presently in charge of the Honolulu office of the Immigration and Naturaliza-

tion Service, Honolulu, Territory of Hawaii; and as such is the agent and representative of the Commissioner of Immigration and Naturalization, the Attorney General of the United States and the Department of Justice in connection with matters of deportation.

4. That defendant is duly authorized, in his official capacity to carry into effect the provisions of the Immigration and Nationality Act of 1952 (8 USCA 1101 et seq.) and more particularly to execute warrants of deportation issued pursuant to said Act.

5. That on October 20, 1953, there was issued by the District Director, Honolulu District, Immigration and Naturalization Service, a warrant for arrest for deportation of plaintiff on the ground that he had last entered in the United States as a nonimmigrant visitor for business, and had failed to maintain his status.

6. That hearings were duly held before a special inquiry officer of the Immigration and Naturalization Service on November 17, 1953, and December 1, 1953; and on December 3, 1953, said special inquiry officer entered his findings and an order, ordering that plaintiff be deported from the United States on the charge contained in the warrant of arrest.

7. That plaintiff duly perfected an appeal to the Board of Immigration Appeals, which on November 8, 1954, dismissed said appeal.

8. That the aforesaid order is a final order in an



administrative proceeding, to wit: a deportation proceeding, by an administrative agency of the Government of the United States, to wit: The Immigration and Naturalization Service.

9. That plaintiff is informed and believes, and on the basis of such information and belief alleges the fact to be that unless defendant is enjoined and restrained from deporting plaintiff, defendant intends to and will deport plaintiff, or cause the deportation of plaintiff forthwith, or at any early date, from Honolulu to Manila, Philippine Islands, pursuant to said order of deportation, without affording plaintiff an opportunity to request and secure review by this or any court of the said order of deportation as provided by the Administrative Procedure Act.

10. That the jurisdiction of this Court to grant the relief prayed for herein is based upon the Declaratory Judgment Act, Title 28, U.S.C., Sections 2201, 2202, upon the provisions of the Act of June 11, 1946, more specifically known as the "Administrative Procedure Act" (5 U.S.C. Secs. 1001-1011), and particularly under and by virtue of the provisions of Section 10 of the said Act (5 U.S.C. 1009), and this Court has jurisdiction under the provisions of the said Act to enjoin defendant herein from executing and carrying into effect or otherwise acting upon an unlawful and illegal order and warrant of deportation.

11. That plaintiff does not desire to be deported from this country.

12. That plaintiff has exhausted his administrative remedies.

13. Plaintiff admits that he was last admitted into the United States as a "nonimmigrant, visitor for business," but states the fact to be that that in truth, substance and fact he was and still is a bona fide permanent resident of the United States returning to his home and residence in Honolulu, but that through improper advice from United States consular officials he made entry into the United States as aforesaid rather than as a permanent resident re-entering the country as was his right and intention.

14. That the said order for deportation, the findings of fact, conclusions of law, the entire proceedings to deport plaintiff, and all other actions of the Government herein to achieve that purpose are unlawful and illegal in that they deprive plaintiff of his liberty and property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that Section 241 (a)(9) of the Immigration and Nationality Act (8 USCA 1251 (a)(9) is improperly and unlawfully applied to plaintiff who at the time of his last entry into the United States as aforesaid was in fact and in substance a bona fide resident of the United States returning to his home and residence and not a nonimmigrant entering the United States for business.

15. That the entire proceedings to deport plaintiff are void and contrary to law in that they are not based upon an order issued by the Attorney

General of the United States as required by Sec. 241 (a) of the Immigration and Nationality Act (8 USCA 1251 (a)).

16. That the entire proceedings to deport plaintiff are null and void and contrary to law in that the said proceedings and said order of deportation do not show affirmatively that the party issuing same had legal authority to issue said order of deportation.

17. That the order for deportation of the plaintiff is void and contrary to law in that there is no legal evidence in the record to sustain a finding other than that the plaintiff is and was a permanent resident of Honolulu, Territory of Hawaii and was not a nonimmigrant visitor for business and hence that plaintiff is not subject to deportation upon the charge set forth in the warrant.

18. That the entire proceedings and order to deport plaintiff are null and void and contrary to law in that there is absolutely no evidence in the record at all as to whether plaintiff failed to maintain his status (as charged in the warrant of arrest for deportation); or that if he did change his status, whether said charge was voluntary or involuntary on his part.

Wherefore, plaintiff prays for judgment:

1. Declaring the order for deportation of the plaintiff null and void and of no effect;

2. Declaring that the order of deportation and the particular sections of the statute upon which it

is based as applied to the plaintiff unconstitutional and void as denying plaintiff of his rights under the Constitution of the United States;

3. Enjoining and restraining the defendant from acting upon said order for deportation of the plaintiff.

4. Pending the final determination of this action, that a preliminary injunction may issue, restraining the defendant, his agents, representative and attorneys from proceeding with the deportation of the plaintiff; and to preserve the status and the rights of the parties, plaintiff prays for a temporary restraining order to the like effect as the preliminary injunction prayed for herein, and for such other and further relief as this Court may deem just and proper.

Dated at Honolulu, Hawaii, this 31st day of January, 1956.

/s/ HYMAN M. GREENSTEIN,  
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed January 31, 1956.

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[Title of District Court and Cause.]

### ANSWER

Comes now defendant above named, by Louis B. Blissard, United States Attorney for the District of Hawaii, and Charles B. Dwight III, Assistant United States Attorney for the District of Hawaii,

and in answer to the Complaint filed herein respectfully alleges as follows:

### First Defense

Admits the allegations contained in Paragraphs 2, 4, 5, 6, 7, 8 and 12 of the Complaint; denies the allegations contained in Paragraphs 14, 15, 16, 17 and 18 of the Complaint; states that he is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11 of the Complaint.

Admits the allegations contained in Paragraph 1 of the Complaint, except those allegations which state: "from which time he has continuously maintained his residence in Honolulu," which is denied.

Admits the allegations contained in Paragraph 3, but only to the extent that he is authorized to act under the regulations contained in Title 8, Code of Federal Regulations.

States that the allegations contained in Paragraph 10 are conclusions of law and need be neither denied or admitted.

Admits those allegations of Paragraph 13 which state: "plaintiff admits that he was last admitted into the United States as a non-immigrant visitor for business," and denies the remaining allegations of Paragraph 13.

Admits the allegations of Paragraph 9, except those which state: "without affording plaintiff an opportunity to request and secure review by this or any court of the said order of deportation as provided by the Administrative Procedures Act," which



defendant denies, and alleges that defendant will act in accordance with the law and regulations concerning the deportation of aliens such as the plaintiff and in conformity with the orders of this or any other court which has jurisdiction to review the administrative order of deportation.

### Second Defense

In further answer to the Complaint filed herein, the defendant affirmatively alleges as follows:

1. That the plaintiff is an alien, a native and a citizen of the Republic of the Philippines;

2. That the plaintiff last entered the United States at the Port of Honolulu, Territory of Hawaii, on January 28, 1950, and was admitted under Section 3(2) of the Immigration Act of 1924 until June 28, 1950, and was granted an extension of the term of his admission until February 15, 1951;

3. That application for further extension of stay was denied on October 27, 1952;

4. That the Special Inquiry Officer found the plaintiff subject to deportation in that, after admission to the United States as a non-immigrant, to wit, a visitor for business under Section 3(2) of the Immigration Act of 1924, he failed to comply with the conditions of such status.

5. That this finding of the Special Inquiry Officer and his decision ordering deportation were based upon reasonable, substantial and probative evidence.

Wherefore, the defendant prays that the Complaint be dismissed.

Dated: Honolulu, T.H., this 6th day of February, 1956.

LOUIS B. BLISSARD,  
United States Attorney,  
District of Hawaii,

By /s/ CHARLES B. DWIGHT, III,  
Asst. United States Attorney,  
Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed February 6, 1956.

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[Title of District Court and Cause.]

DOCKET ENTRIES

1956

Feb. 15—Entering proceedings at hearing on merits of case, Plaintiff's Exhibit No. 1, record file of plaintiff admitted in evidence, case submitted for argument without offer of any further evidence, argument by respective counsel and relief prayed for in complaint denied by the Court.

Judgment entered in favor of defendant and against plaintiff this 15th day of February, A.D. 1956, at 2:30 p.m. McLaughlin, Judge. Respective counsel advised by telephone of entry.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Alejandro Carpentero, also known as Alejandro Llanos, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order denying the petition of the plaintiff and entering judgment in behalf of the defendant entered in this action on February 15, 1956.

Dated at Honolulu, Hawaii, this 17th day of February, 1956.

By /s/ HYMAN M. GREENSTEIN,  
Attorney for Appellant.

[Endorsed]: Filed February 17, 1956.

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[Title of District Court and Cause.]

### BOND FOR COSTS ON APPEAL

The plaintiff having filed notice of appeal from the judgment of this Court entered on February 15, 1956, to the United States Court of Appeals for the Ninth Circuit, hereby desposits with the Clerk of this Court the sum of \$250.00, in United States currency, subject to the orders of this Court as security that said plaintiff appellant shall pay all costs which may be awarded against him on appeal.

Dated at Honolulu, Hawaii, this 28th day of February, 1956.

/s/ HYMAN M. GREENSTEIN,  
Attorney for Plaintiff.



Receipt of the sum of \$250.00 in United States Currency acknowledged this 29th day of February, 1956.

/s/ WM. F. THOMPSON, JR.,  
Clerk of the United States  
District Court.

[Endorsed]: Filed February 29, 1956.

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In the United States District Court  
for the District of Hawaii

Civil No. 1462

ALEJANDRO CARPENTERO, Also Known as  
ALEJANDRO LLANOS,

Plaintiff,

vs.

WILLIAM A. HOGAN, Officer in Charge, Immi-  
gration and Naturalization Service, Honolulu,  
Territory of Hawaii,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above cause having come on regularly for hearing on February 15, 1956, the Honorable J. Frank McLaughlin presiding without a jury, no jury having been requested, the Plaintiff appearing by his attorneys, Hyman M. Greenstein, Esquire, and the Defendant appearing by his attorneys, Louis B. Blissard, United States Attorney for the

District of Hawaii, and Charles B. Dwight, III, Assistant United States Attorney for the District of Hawaii, the said cause having been heard on February 15, 1956, and the evidence having been introduced on behalf of the Plaintiff and Defendant, and the Court having considered the same, and having heard the arguments of counsel and being fully advised in the premises, now makes the following findings of fact and conclusions of law:

### Findings of Fact

#### I.

The Plaintiff is an alien, a native and citizen of the Republic of the Philippines.

#### II.

The Plaintiff last entered the United States at the port of Honolulu, Territory of Hawaii, on January 28, 1950, and was admitted under Section 3(2) of the Immigration Act of 1924 until June 28, 1950, and was granted an extension of the term of his admission until February 15, 1951.

#### III.

Application for further extension of stay was denied on October 27, 1952.

#### IV.

The Special Inquiry Officer found Plaintiff to be subject to deportation on the ground that after admission to the United States as a non-immigrant, to wit, a visitor for business under Section 3(2) of the Immigration Act of 1924, he failed to comply with the conditions of such status.

V.

The findings of the Special Inquiry Officer and his decision ordering deportation were based upon reasonable, substantial and probative evidence.

Conclusions of Law

I.

This Court has jurisdiction to hear and determine the within cause under Title 5, United States Code, Section 1009, and Title 28, United States Code, Sections 2201 and 2202.

II.

Plaintiff had the status of a visitor for business under Section 3(2) of the Immigration Act of 1924 when he entered the United States on January 28, 1950, and his deportation as a visitor who has not maintained his status is in accordance with law.

III.

A Special Inquiry Officer has the power to order deportation of an alien, both by law and the regulations promulgated thereunder.

IV.

The expiration of Plaintiff's extension of stay on February 15, 1951, violated Plaintiff's status as a business visitor and consequently made him subject to deportation.

Let judgment in favor of the Defendant and against the Plaintiff be entered accordingly.

Dated: Honolulu, T.H., this 2d day of March, 1956.

/s/ J. FRANK McLAUGHLIN,  
Judge, United States District  
Court.

Receipt of copy acknowledged.

[Endorsed]: Filed March 2, 1956.

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[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY

The points upon which appellant intends to rely on this appeal are as follows:

1. The court erred in finding and concluding that plaintiff was a visitor for business upon his last entry into the United States.
2. The court erred in finding and concluding that plaintiff was a visitor for business who failed to maintain his status as such.
3. The court erred in failing to find and conclude that at the time of plaintiff's last entry into the United States plaintiff was in fact an alien who had previously been lawfully admitted for permanent residence and had not lost that status as a permanent resident of the United States.
4. The court erred in failing to find and conclude that plaintiff's visit to the Philippines was of a temporary nature and did not change his status.

5. The court erred in failing to find and conclude that plaintiff was a returning resident rather than a visitor for business upon his last entry into the United States.

6. The court erred in ruling that plaintiff was subject to deportation under Section 3(2) of the Immigration Act of 1924 as a business visitor who did not maintain his status.

Dated at Honolulu, T.H., this 20th day of March, 1956.

/s/ HYMAN M. GREENSTEIN,  
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed March 20, 1956.

In the United States District Court for the  
District of Hawaii

Civil No. 1462

ALEJANDRO CARPENTERO, Also Known as  
Alejandro Llanos,

Plaintiff,

vs.

WILLIAM A. HOGAN, Officer in Charge, Immi-  
gration and Naturalization Service, Territory of  
Hawaii,

Defendant.

### TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S.  
District Court, Honolulu, T. H., on February 15,  
1956, at 10:00 o'clock a.m.

Before Hon. J. Frank McLaughlin, Judge.

Appearances:

HYMAN M. GREENSTEIN, ESQ.,

Appearing for the Plaintiff;

CHARLES B. DWIGHT III, ESQ.,

Assistant U. S. Attorney,

Appearing for the Defendant.

Proceedings

The Clerk: Civil No. 1462, Alejandro Carpentero,  
also known as Alejandro Llanos, Plaintiff, versus

William A. Hogan, Officer in Charge, Immigration and Naturalization Service, Territory of Hawaii; case called for trial.

The Court: Is that the purpose, gentlemen, that the case be tried?

Mr. Dwight: Well, I think the purpose is judicial review. It amounts to a trial. It is a hearing on the merits.

The Court: A hearing on the merits?

Mr. Dwight: A hearing on the merits, yes.

The Court: I was a little confused as to what was coming up. I notice you filed your answer within 60 days and long prior to the expiration of 60 days, thus putting the matter at issue. But it could have been that some injunctive relief was being applied for by motion, for that was contained in the numerous prayers that are found at the end of the petition. But it is clear in everyone's mind that this is a hearing on the merits, the case being at issue?

Mr. Greenstein: That is correct, your Honor.

The Court: Are you both ready?

Mr. Dwight: Ready.

The Court: Now, Mr. Greenstein——

Mr. Greenstein: May we at the outset say that this, of course, is a supplementary case following the prior habeas corpus which I filed in behalf of the same party, being in the records of this Court, Habeas Corpus No. 356. That particular matter was rendered moot. We filed notice of appeal and the matter was rendered moot by the man being retaken and there being an actual change of physical custody. Following up——



The Court: Well, excuse me. For the record, the retake was in connection with what?

Mr. Greenstein: As I understand it, the retake was in connection with, I presume, a violation of conditions of parole by failing to report to the order for deportation.

The Court: Well, I don't know what it was, but all I want you to at least indicate on the record is that he was retaken in connection with a criminal case.

Mr. Greenstein: That is correct. So that actually the man is now in custody of the warden of Oahu Prison, the Attorney General, on a prior criminal conviction. On the matters which we are considering here today, in order that the record may be complete, I will respectfully request that the exhibit which was entered in the habeas corpus case, which was the record before the Immigration Department, be made an exhibit in behalf of the petitioner in this case.

The Court: Any objection?

Mr. Dwight: No objection.

The Court: Very well, the same may be an exhibit in this case, borrowed from the habeas corpus case. That may be labeled in this case as——

The Clerk: Plaintiff's Exhibit 1.

(The exhibit referred to was received in evidence as Plaintiff's Exhibit 1.)

Mr. Greenstein: Actually with that exhibit in evidence, it will constitute all of the evidence as such which we would have to present in any event because



it is rather complete. Now, the points we are trying to urge in this petition——

The Court: Wait a minute. Are you moving to argument now? If your evidence is finished, let's see if the government has anything to put in.

Mr. Greenstein: I have no further evidence to present.

The Court: Do you have any evidence?

Mr. Dwight: No, your Honor, we have no evidence to present other than the record.

The Court: All right. We are ready for argument? Are you both ready to be heard in argument?

Mr. Dwight: Yes, your Honor.

The Court: All right.

(Arguments presented by Counsel.)

The Court: We went over this ground pretty thoroughly at the time of the habeas corpus proceeding and very little, if anything, has been added. I have reviewed the record of the Immigration authorities and I have considered the questions of law raised by the pleadings, and I do not find that the plaintiff is entitled to the relief prayed for on any one of the grounds alleged.

Therefore, the petition is denied and judgment to that effect may enter forthwith. So that puts you, as you probably anticipated, back on the road to the Ninth Circuit.

Mr. Greenstein: That is correct.

The Court: All right.

## Reporter's Certificate

I, Albert Grain, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in Civil No. 1462, Alejandro Carpentero, Plaintiff, vs. William A. Hogan, Officer in Charge, Immigration Service, Territory of Hawaii, Defendant, reported by me on February 15, 1956, and subsequently transcribed by me.

March 22nd, 1956.

/s/ ALBERT GRAIN,  
Official Court Reporter.

[Endorsed]: Filed March 22nd, 1956.

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[Title of District Court and Cause.]

## CERTIFICATE OF CLERK

United States of America,  
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 33 consists of a statement of the names and addresses of the attorneys of record and of the various pleadings, exhibits and transcript of proceedings as hereinbelow listed and indicated:

Originals

Complaint for Declaratory Judgment and for Other Relief.

Answer.

Notice of Appeal.

Bond for Costs on Appeal.

Findings of Fact and Conclusions of Law.

Statement of Points on Which Appellant Intends  
to Rely.

Designation of Contents of Record on Appeal.

Transcript of Proceedings.

Counter Designation of Record on Appeal.

Plaintiff's Exhibit No. 1.

I further certify that included in said record on  
appeal is a copy of the Docket Entries of February  
15, 1956.

In Witness Whereof, I have hereunto set my  
hand and affixed the seal of said District Court, this  
23rd day of March, 1956.

[Seal]      /s/ WM. F. THOMPSON, JR.,  
                 Clerk, U. S. District Court,  
                 District of Hawaii.

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[Endorsed]: No. 15089. United States Court of  
Appeals for the Ninth Circuit. Alejandro Carpen-  
tero, also known as Alejandro Llanos, Appellant,  
vs. William A. Hogan, Officer in Charge, Immigra-  
tion and Naturalization Service, Honolulu, Hawaii,  
Appellee. Transcript of Record. Appeal from the  
United States District Court for the District of  
Hawaii.

Filed March 24th, 1956.

Docketed April 6th, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

